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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/611,783

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EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT

PAPER NUMBER

2145

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/611,783	Applicant(s) HENNESSEY ET AL.	
	Examiner Jeffrey R. Swearingen	Art Unit 2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20071114</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 10/31/07 have been fully considered but they are not persuasive.
2. Applicant argues that Auerbach failed to disclose an arena with multiple nodes within the arena. Applicant claimed *determining if the client is a member of an arena in a list of arenas, wherein an arena is a specified set of nodes on a network*. Applicant failed to disclose an arena with multiple nodes, since a specified set of nodes may consist of a single node based on mathematical set theory.
3. Applicant argues that Auerbach failed to teach routing content in accordance with routing rules specific to the arena. Auerbach taught routing based on proximity of nodes. The proximity of a single node, which meets Applicant's claimed definition of an arena, meets Applicant's claim language of routing content in accordance with routing rules specific to an arena.
4. Applicant failed to respond to the double patenting rejection; therefore Applicant has admitted the rejection is proper and should file a terminal disclaimer with the next response.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-20 and 22-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Auerbach (US 6,832,253 B1).

3. In regard to claims 1, 10, 19, Auerbach disclosed:

receiving a request for content from a client at a directory server; column 6, lines 42-43

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determining if the client is a member of an arena in a list of arenas, wherein an arena is a specified set of nodes on a network; column 6, lines 27-40. Determining whether a client is a member of an arena is done by proximity between the client and potential video servers. and if the client is a member of the arena, applying routing rules to the delivery of content to the client, including routing rules specific to the arena. Column 8, lines 56-67 define proximity as functioning along a specific network path.

4. In regard to claims 2, 11, 20, Auerbach disclosed:

defining an arena by receiving input from a user and using the input to specify one or more edge routers that surround nodes on the network that are members of the arena. The content control system receives or otherwise identifies the location of one or more clients requesting content. Column 7, line 21. When the user requests the content in column 6, this is the input. The input determines the proximity, which in turn specifies the edge routers surrounding nodes on the network that are members of the arena. Column 7, lines 18-67.

5. In regard to claims 3, 12, 22, Auerbach disclosed:

after an arena is defined, a node can be dynamically assigned to and removed from the arena as the node is physically moved. Proximity is determined by ping, routing protocols, routing tables, and traceroute. See columns 9 and 10 for multiple ways to dynamically change the arenas as the node is moved based on the actual path calculations performed by these network management tools.

6. In regard to claims 4, 13, 23, Auerbach disclosed:

defining an arena by receiving input from an administrator and using the input to specify a list of addresses for nodes that comprise the arena. See routing tables in column 10, lines 33-42.

7. In regard to claims 5, 14, 24, Auerbach disclosed:

a routing rule can prohibit traffic across a specific network link. A bad proximity is attributed to a circuit in column 9, line 17.

8. In regard to claims 6, 15, 25, Auerbach disclosed:

a routing rule can prohibit traffic across a specific network link when the network link reaches a predetermined utilization. Quality of Service is used in determining proximity in column 9, lines 42-50. Network links are labeled based on bandwidth and average traffic in column 10, line 16.

9. In regard to claims 7, 16, 26, Auerbach disclosed:

the routing rule specifies a maximum amount of bandwidth that can be used for content delivery purposes on a specific network link. Quality of service in column 9, lines 42-50.

10. In regard to claims 8, 17, 27, Auerbach disclosed:

applying routing rules to the delivery of content to the client involves attempting to receive content at the client from nodes on a local subnet;

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if no nodes are available on the local subnet, attempting to receive the content from nodes in a local arena;

if no nodes are available on the local arena, attempting to receive the content from nodes in non-local arenas as specified by a fallback list;

if no nodes are available on non-local arenas, attempting to receive the content from nodes that are topologically close on a router graph, wherein the router graph specifies how the nodes on the network are interconnected; and

if no nodes are available on the router graph, attempting to receive the content from an origin server.

This claim uses routing rules based on multiple proximities. Multiple proximities are taught in column 13, lines 31-39. The packets are transmitted based upon their "proximity" to the server and the client. A local subnet would be the nearest proximity. If the local subnet was not available, local nodes would be the next proximity. If the local arena nodes were not available, topologically close nodes would be a lower proximity, and the origin server would be the lowest proximity. See further column 9, lines 4-24.

11. *In regard to claims 9, 18, 28, Auerbach disclosed:*

the fallback list for arenas specifies an ordering of arenas. Routing tables specify preferred outgoing lines in column 10, lines 33-42.

12. *In regard to claim 21, Auerbach disclosed:*

The routing rules specific to the arena include one or more of: an order of precedence for fallback within match sets, an order of precedence for fallback between match sets, identification of sets to avoid, and rules for when to return to an origin server.

Column 8, lines 56-67 define proximity as functioning along a specific network path. This is an order of precedence for fallback within match sets.

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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14. Claims 1, 10 and 19 are provisionally rejected on the ground of nonstatutory double patenting over claims 1, 15, 24, 38, 47 of copending Application No. 10/211,602. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The claims in the instant application are a broader recitation of the claims currently present in 10/211,602 as of this office action.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey R. Swearingen
Examiner
Art Unit 2145

JRS

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2145